

Notices of Proposed Rulemaking

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

Editor's Note: The following Notice of Proposed Rulemaking was exempt from Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 2884.)

[R12-208]

PREAMBLE

- 1. Article, Part, or Section Affected (as applicable) Rulemaking Action**
R2-8-126 Amend
- 2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):**
Authorizing statute: A.R.S. § 38-714(E) (4)
Implementing statute: A.R.S. § 38-764(F)
- 3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:**
Notice of Rulemaking Docket Opening: 18 A.A.R. 2855, November 2, 2012 (*in this issue*)
- 4. The agency's contact person who can answer questions about the rulemaking:**
Name: Patrick M. Klein, Assistant Director
Address: ASRS
3300 N. Central Ave., Suite 1400
Phoenix, AZ 85012-0250
Telephone: (602) 240-2044
Fax: (602) 240-5303
E-mail: PatK@azasrs.gov
Web site: www.azasrs.gov
- 5. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:**
As allowed by statute, the Board is amending R2-8-126 to provide the Board with flexibility regarding the threshold amount the Board uses to decide whether a Plan member will receive the Plan benefit in a series of periodic payments or as a lump sum.

This rulemaking is exempt from the rulemaking moratorium contained in Executive Order 2012-03 under paragraph (4)(c) of the Order.
- 6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
The Board did not review a study relevant to this rulemaking.
- 7. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:**

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Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

The rulemaking will provide the Board with flexibility to increase the amount of retirement benefit that will be paid as a lump sum rather than in a series of periodic payments. This reduces costs to the ASRS trust fund and has no negative impact on the Plan member.

9. The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:

Name: Patrick M. Klein, Assistant Director
Address: ASRS
3300 N. Central Ave., Suite 1400
Phoenix, AZ 85012-0250
Telephone: (602) 240-2044
Fax: (602) 240-5303
E-mail: PatK@azasrs.gov
Web site: www.azasrs.gov

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

An oral proceeding regarding the proposed rule will be held as follows:

Date: Wednesday, December 5, 2012
Time: 9:00 a.m.
Location: ASRS Board Room, 10th floor
3300 N Central Ave.
Phoenix, AZ 85012

The rulemaking record will close at 5:00 p.m. on Friday, December 7, 2012.

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

None

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

No permit is required.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Federal law applies to retirement programs. However, there is no federal law specifically applicable to this rule-making.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted.

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:

None

13. The full text of the rule follows:

TITLE 2. ADMINISTRATION

CHAPTER 8. STATE RETIREMENT SYSTEM BOARD

ARTICLE 1. RETIREMENT SYSTEM; DEFINED BENEFIT PLAN

Section
R2-8-126. Calculating Benefits

ARTICLE 1. RETIREMENT SYSTEM; DEFINED BENEFIT PLAN

R2-8-126. Calculating Benefits

- A. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
- B. No change
- C. No change
- D. No change
- E. ~~If~~ As authorized under A.R.S. § 38-764(F), if the life annuity of any Plan member is less than \$20 per month a monthly amount determined by the Board, the ASRS shall not pay the annuity. Instead, the ASRS shall make a lump sum payment in the amount determined by using the appropriate actuarial assumptions in ~~R2-8-123~~.
- F. No change
- G. No change
- H. No change

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TITLE 6. ECONOMIC SECURITY

CHAPTER 9. DEPARTMENT OF ECONOMIC SECURITY

APPELLATE SERVICE ADMINISTRATION

Editor's Note: The following Notice of Proposed Rulemaking was reviewed per Executive Order 2012-03 as issued by Governor Brewer. (See the text of the executive order on page 2884.) The Governor's Office authorized the notice to proceed through the rulemaking process on August 19, 2010.

[R12-209]

PREAMBLE

- 1. Article, Part, or Section Affected (as applicable) Rulemaking Action**

Chapter 9	New Chapter
Article 3	New Article
R6-9-301	New Section
R6-9-302	New Section
- 2. Citations to the agency's statutory authority to include the authorizing statute (general) and the implementing statute (specific):**

Authorizing statute: A.R.S. § 41-1954(A)(3)
Implementing statute: A.R.S. §§ 23-671, 23-672, 23-681, 23-682, 23-773, 41-1992, 41-1993, and 41-1995
- 3. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:**

Notice of Rulemaking Docket Opening: 18 A.A.R. 1078, May 11, 2012
- 4. The agency's contact person who can answer questions about the rulemaking:**

Name:	Rameshwar Adhikari
Address:	Department of Economic Security P.O. Box 6123, Site Code 837A Phoenix, AZ 85005
	or
	Department of Economic Security 1789 W. Jefferson St., Site Code 837A Phoenix, AZ 85007

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Telephone: (602) 542-9199
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E-mail: radhikari@azdes.gov
Web site: http://www.azdes.gov

5. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

Laws 2008, Second Regular Session, Ch. 98 § 4 (H.B. 2204) amended A.R.S. §§ 23-671, 23-672, 23-681, 23-682, 23-773, 41-1992, 41-1993, and 41-1995. H.B. 2204 allows the Appellate Service Administration ("ASA") to transmit electronically, rather than by mail, documents to parties who have consented to such service.

Adopting this rule will accomplish the intent of this legislation by permitting the ASA to electronically transmit documents to parties.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

Not applicable

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

The State will achieve a small cost savings from this rule, since it will be able to save money on postage by being permitted to submit documents electronically. ASA estimates it saves approximately \$5,000 to \$10,000 per year from the Unemployment Insurance (UI) fund source and approximately \$1,000 to \$2,000 per year from the Public Assistance (Non-UI Cases) fund source as a result of using e-mail to transmit some of its decisions to parties.

9. The agency's contact person who can answer questions about the economic, small business and consumer impact statement:

Name: Rameshwar Adhikari
Address: Department of Economic Security
P.O. Box 6123, Site Code 837A
Phoenix, AZ 85005
or
Department of Economic Security
1789 W. Jefferson St., Site Code 837A
Phoenix, AZ 85007
Telephone: (602) 542-9199
Fax: (602) 542-6000
E-mail: radhikari@azdes.gov
Web site: http://www.azdes.gov

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

The Department does not plan to hold oral proceedings on this rule, unless a public hearing is requested within 30 days of the publication of this rule. All written comments on the rule and any requests for public hearing shall be made to the individual listed in item 4.

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

None

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

Not applicable

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Not applicable

- c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

Not applicable

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

None

13. The full text of the rules follows:

TITLE 6. ECONOMIC SECURITY

CHAPTER 9. DEPARTMENT OF ECONOMIC SECURITY APPELLATE SERVICE ADMINISTRATION

ARTICLE 3. DECISIONS, HEARINGS, AND ORDERS

Section

R6-9-301. Definitions

R6-9-302. Electronic Service of Documents by the Appellate Services Administration

ARTICLE 3. DECISIONS, HEARINGS, AND ORDERS

R6-9-301. Definitions

1. "ASA" means the Appellate Services Administration within the Arizona Department of Economic Security.
2. "Electronic transmission" means the service of documents via facsimile transmission ("fax") and electronic mail ("e-mail").
3. "On the record" means audio recorded during a formal proceeding conducted by a hearing officer.
4. "Party" means an appellant, appellee, or the Department.

R6-9-302. Electronic Service of Documents by the Appellate Services Administration

- A.** ASA may transmit documents electronically, rather than by conventional mail, to parties who have consented to electronic service.
- B.** Consent to Electronic Service.
1. A party may only consent to be electronically served documents by:
 - a. Submission of a written consent to ASA; or
 - b. Consenting on the record.
 2. The party consenting to electronic service of documents shall provide ASA with either a valid e-mail address or a fax number for service of documents.
 3. The party consenting to electronic service of documents shall also provide ASA with a physical mailing address for ASA to use at its discretion to also serve documents. A party may use a post office box as its physical mailing address.
- C.** Withdrawal of Consent to Electronic Service.
1. A party may withdraw consent to receive documents by electronic means at any time. The withdrawal shall be on the record or in writing to ASA. The withdrawal shall be effective upon receipt by ASA.
 2. ASA shall treat a notice of a change of electronic address as both a withdrawal of the consent to receive documents at the prior address, and as a new consent to receive documents at the new address.
 3. ASA shall not send documents by electronic means after a party withdraws consent.
 4. ASA shall consider service of a document to have no force or effect if ASA sent the document electronically after a party withdrew consent to receive the document electronically even if the party actually received the electronically transmitted document.
- D.** ASA shall consider a document sent by ASA and received by a party at the Mountain Standard Time and date ASA transmits the document to the electronic address provided by the party.
- E.** ASA shall encrypt any document sent by e-mail.
- F.** Failure of Electronic Service; Effect on Timeliness of Filing.
1. When a party notifies ASA that the party did not receive an e-mail message from ASA, was unable to open or download an attached document, or was otherwise unable to access the document to be served, ASA shall re-send the document.
 2. ASA shall calculate any filing deadline that is based on the date ASA electronically sends a document as follows:

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- a. If the party does not receive the original e-mail message due to equipment malfunction, action, or inaction of either ASA or a service provider, then the date of service shall be the date ASA re-sends the documents.
- b. If the party does not receive the original e-mail message due to the party's own equipment malfunction, action, or inaction:
 - i. The date of service shall be the date of original electronic transmission by ASA, and
 - ii. ASA shall exclude from the calculation the time from when the party gave notice of non-receipt and requested that the document be re-sent until ASA re-sends or mails the document.